

1798. not, in some respect, be called *ex post facto*; but the moment it is adopted, the power that it gives, or takes away, begins to operate, or ceases to exist.

THE COURT, on the day succeeding the argument, delivered an unanimous opinion, that the amendment being constitutionally adopted, there could not be exercised any jurisdiction, in any case, past or future, in which a state was sued by the citizens of another state, or by citizens, or subjects, of any foreign state.

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BINGHAM, Plaintiff in Error, *versus* CABOT, *et al.*

THIS action came again before the court,\* on a writ of error; and an objection was taken to the record, that it was not stated, and did not appear in any part of the process and pleadings, that the Plaintiffs below, and the Defendant, were citizens of different States, so as to give jurisdiction to the Federal Court. The caption of the suit was—"At the Circuit Court begun and held at *Boston*, within and for the *Massachusetts* district, on Thursday, the first day of *June*, A. D. 1797, by the honorable OLIVER ELSWORTH, Esq. Chief Justice, and JOHN LOWELL, Esq. District Judge—" *John Cabot, et al. versus William Bingham*:" And the declaration (which was for money had and received, to the Plaintiff's use) set forth, "that *John Cabot*, of *Everly*, in the district of *Massachusetts*, merchant, and surviving copartner of *Andrew Cabot*, late of the same place, merchant, deceased, *Moses Brown*, *Israel Thorndike*, and *Joseph Lee*, all of the same place, merchants, *Jonathan Jackson*, Esq. of *Newbury Port*, *Samuel Cabot*, of *Boston*, merchant, *George Cabot*, of *Brooklyn*, Esq. *Joshua Ward*, of *Salem*, merchant, and *Stephen Cleveland*, of the same place, merchant, all in our said district of *Massachusetts*, and *Francis Cabot*, of *Boston*,  
"aforesaid,

\* See ant. p. 19.

"aforesaid, now resident at Philadelphia aforesaid, merchant, 1798.  
 "in plea of the case, for that said *William*, at said *Boston*, on  
 "the day of the purchase of this writ, being indebted to the  
 "Plaintiffs, &c. promised to pay, &c." The Defendant plead-  
 ed *non assumpsit*, and an issue being thereupon joined and tried,  
 there was a verdict and judgment for the Plaintiff, for 27,224  
 dollars and 93 cents, and costs.

*Lee*, Attorney General, contended for the Plaintiff in error,  
 "that there was not a sufficient allegation on the record, of  
 the citizenship of the parties, to sustain the jurisdiction of the  
 Circuit Court, which is a limited jurisdiction. Though the  
 Constitution declares, that "the citizens of each state shall be  
 "entitled to all privileges and immunities of citizens of the  
 "several states," *Art. 4. s. 2.* it contemplates, in the ju-  
 dicial article, the distinction between citizens of different  
 states. A citizen of one state may reside for a term of  
 years in another state, of which he is not a citizen; for, citi-  
 zenship is clearly not co-extensive with inhabitancy. In the  
 present case, neither the Plaintiffs, generally, nor any indivi-  
 dual of them, nor the Defendants, will be found expressly de-  
 signated as aliens, or as citizens of any other place, or state,  
 than that in which the suit was brought. Besides, there is  
 not an entirety of parties, even as to the Plaintiffs, and they  
 are not all stated as belonging to the same state. Wherever  
 there is a limited jurisdiction, the facts that bring the suit  
 within the jurisdiction must appear on the record. 9 *Mod.* 95.

*Dexter*, (of *Massachusetts*) urged, on the other hand, that  
 sufficient appeared to shew that, by legal intendment, the cause  
 was within the jurisdiction of the court; that though it is dif-  
 ficult to establish a general rule, as to what makes citizenship,  
 yet that the citizenship of a particular state, may be changed,  
 by a citizen of the *United States*, without going through the  
 forms and solemnities required in the case of an alien; that,  
 on the principle of the constitution, a citizen of the *United*  
*States*, is to be considered more particularly as a citizen of that  
 State, in which he has his house and family, is a permanent  
 inhabitant, and is, in short, domiciliated; that stating in the  
 declaration the party to be of a particular place designates his  
 home, and, of course, his citizenship; and that the description  
 of *Francis Cabot* (of *Boston*, aforesaid, now resident in *Phila-*  
*delphia*, &c.) proves what was intended, by stating the places  
 of abode of the several parties. 2 *Danv. Cont.* p. 20. 5 *Com.*  
*Dig.* 289. 2 *Stra.* 786. 290. 1 *L. Raym.* 405. 2 *L. Raym.*  
 1403.

THE COURT were clearly of opinion, that it was necessary  
 to set forth the citizenship (or alienage, where a foreigner  
 was concerned) of the respective parties, in order to bring the  
 case

1798. case within the jurisdiction of the Circuit Court; and that the record, in the present case, was in that respect defective.

This cause and many others, in the same predicament, were, accordingly, struck off the docket.

### JONES, Indorsee, *versus* LE TOMBE.

**C**APIAS in Case. This was an action brought, originally, in the Supreme Court, by *John Coffin Jones*, a citizen of *Massachusetts*, as Indorsee of *James Swan*, against the Defendant, the Consul General of the *French Republic*, as Drawer of a number of protested bills of exchange (for the aggregate amount of 385,964 livres tournois, 3 sols 8 den. equal to 70,052 dollars and 46 cents) corresponding with the following form :

CONSULAT  
GENERAL

Pres les ETATS  
UNIS.

AN

No.

TROISIEME.

(Signé) Le Consul, L'IVT.  
an  
Enregistrée sous le No.  
au Consulat particulier de  
la République Française.  
A Philadelphie, le

Philadelphie, le an } 179 (v.s.)  
de la République Française,  
une & indivisible.

ARGENT TOURNOIS  
faisant, à 18 cents & 15/100mes de cent  
de Dollar par livres tournois

CITOYEN,

A trente jours de vue, je vous prie de payer par cette troisième de change (la première, la seconde ou la quatrième ne l'étant) à l'ordre de la somme tournois, en écus de six livres ou autres espèces d'or ou argent, à la valeur réduite de dix-huit cent & quinze centièmes de cent de Dollar, par livres tournois, ou en Lettres-de-change sur Hambourg, à l'acceptation & au change convenus avec le Porteur, valeur reçue de dit, conformément au compte rendu au Ministre de par dépêché du an No. timbrée & à ma lettre d'avis en date de ce jour No.

(Signé) LE TOMBE, Le Consul Général.

Au Citoyen l'ayeur Général  
des dépenses du Département  
de

A la Trésorerie Nationale;

A PARIS.

Je prie le Citoyen Ministre de  
de faire acquitter la présente de laquelle  
j'ai garanti le payment sur l'honneur de la  
Nation Française.

Signé. ADET

Le Ministre Plénipotentiaire de la République  
Française près les Etats Unis d'Amérique.

And